

REMARKS

This is in response to the Office Action of August 19, 2009. The polyglycerol fatty acid ester component in the presently claimed oil-in-water emulsion is limited by the present Amendment to certain polyglycerol fatty acid diesters and trimers, based upon such disclosure as that in the first paragraph on page 11 of the specification. No new matter is introduced by this Amendment. Claims 1-4 remain pending in the application.

Anticipation rejections

Claims 1-4 were rejected under 35 U.S.C. § 102(b) as being anticipated by JP 07-115901 (Kazuyoshi). Office Action, pages 4-5. Claims 1-4 were rejected under 35 U.S.C. § 102(e) as being anticipated by US 2003/0021878 A1 (Nunes). Office Action, page 5. The rejections are respectfully traversed, on the ground that Kazuyoshi and Nunes fail to disclose compositions containing the polyglycerol fatty acid diesters and trimers now recited in Applicants' claims. Withdrawal of the anticipation rejections is in order and is earnestly solicited.

Obviousness rejection

Claims 1-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,193,986 B1 (Sakurada) in view of US 4,379,755 (Yamada) and WO 01/58279 (Takahashi) "as evidenced by Kazuyoshi." The rejection is respectfully traversed.

Sakurada discloses a water-in-oil emulsion. See, for instance, column 2, line 37; column 7, lines 32-42 ("mixing the aqueous phase with an oil phase ... to finally obtain a W/O-type emulsion"). The Sakurada water-in-oil emulsions are distinct from the oil-in-water emulsions of the present invention. Sakurada fails to teach or suggest an oil-in-water emulsion.

The gelatinizing agent disclosed by Yamada contains (a) hydrophilic sucrose fatty acid ester and (b) hydrophilic liquid polyhydric alcohol. In contrast, the sucrose acetate isobutyrate employed in the present invention is lipophilic, not hydrophilic. The Yamada teaching of using hydrophilic sucrose fatty acid esters teaches away from the use of lipophilic sucrose esters as in the present invention.

Neither Sakurada nor Yamada teaches or suggests sucrose acetate isobutyrate as an emulsifying agent. Takahashi merely lists many different types of emulsifiers that can be used as alternatives or in combination in the Takahashi technology. The Takahashi reference teaches nothing at all about equivalence of emulsifiers in Applicants' technology.

It had been demonstrated – in the first ‘Declaration under 37 CFR 1.132’ of Makoto Ishikawa, filed with the Amendment of January 31, 2008, and in the second ‘Declaration under 37 CFR 1.132’ of Makoto Ishikawa, filed with the Amendment of July 9, 2009 – that the use of sucrose acetate isobutyrate as required by all of Applicants’ claims provides unexpected beneficial results.

Applicants present herewith a third ‘Declaration under 37 CFR 1.132’ of Makoto Ishikawa, which clarifies significant differences between the technology of the present invention and technology disclosed by Kazuyoshi.

Kazuyoshi teaches in his paragraph [0012] that the polyglycerol fatty acid esters which can be utilized in his technology are “decaglycerol monoleate, decaglycerol monostearate, decaglycerol monopalmitate, decaglycerol monomyristate, and the like.” Kazuyoshi’s examples illustrate only decaglycerol monooleate (Example 1) and decaglycerol monostearate (Example 3). Kazuyoshi neither teaches nor suggests the use of “a polyglycerol fatty acid ester selected from the group consisting of pentaglycerol trimyristate, pentaglycerol dimyristate, pentaglycerol dioleate, hexaglycerol trimyristate, hexaglyecerol tripalmitate, hexaglycerol tristearate, and hexaglycerol trioleate” as required by claims 1-4 herein.

The third Ishikawa Rule 132 Declaration (enclosed herewith) compares results obtained with pentaglycerol monomyristae (Comparative Product B) and with decaglycerol monooleate (Comparative Product C) – both representative of the Kazuyoshi disclosure – to results obtained with pentaglycerol dimyristate (Product A) – which representative of the present disclosure. The results, summarized in Table I of the Declaration, show that a mixture containing Product A does not lose its taste upon heating of the mixture, while comparable mixtures containing Comparative Products B and C exhibit detrimental changes in taste due to heating.

Mr. Ishikawa indicates what he believes to be the reasons for this *unexpected difference* between the effects produced by the polyglycerol fatty acid esters specified in the present claims

and the corresponding effects produced by the Kazuyoshi polyglycerol fatty acid esters. It goes without saying that nothing in the references of record would lead a person of ordinary skill in the art to expect that there would be significant differences between results obtained with such (superficially) similar polyglycerol fatty acid esters.

Applicants respectfully submit that, based upon the current record – which includes three Declarations under 37 CFR 1.132 of Makoto Ishikawa – the rejection of claims 1-4 over the Sakurada and Yamada and Takahashi and Kazuyoshi disclosures is not sustainable.

Contact information

If there are any questions concerning the present application, the Examiner is respectfully requested to contact Richard Gallagher (Registration No. 28,781) at (703) 205-8008.

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Respectfully submitted,

GMM/RG

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